

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

UNITED STATES OF AMERICA,)	CASE NO: 4:13-CR-00176-1
)	
Plaintiff,)	CRIMINAL
)	
vs.)	Plano, Texas
)	
HABIBOOLA NIAMATALI,)	Wednesday, July 20, 2016
)	(11:32 a.m. to 12:21 p.m.)
<u>Defendant.</u>)	

HEARING ON MOTION FOR BILL OF PARTICULARS (DE #229)

HEARING ON MOTION FOR CONTINUANCE OF PRETRIAL CONFERENCE
AND TRIAL SCHEDULING (DE #247)

BEFORE THE HONORABLE DON D. BUSH,
UNITED STATES MAGISTRATE JUDGE

Appearances:	See Next Page
Court Reporter:	Recorded; Digital Recording
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DEFENDANT'S EXHIBITRECEIVED

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Plano, Texas; Wednesday, July 20, 2016; 11:32 a.m.

(Call to Order)

THE COURT: 4:13-cr-176, *United States of America*
versus Niamatali.

Mr. Jackson?

MR. JACKSON: Good morning, your Honor. Mr. Russ is
also here for the Government.

THE COURT: Hi, Mr. Russ.

MR. RUSS: Hello, your Honor.

THE COURT: Mr. Mills?

MR. MILLS: Good morning, your Honor.

THE COURT: Good morning, sir.

MR. MILLS: Tom Mills and Ms. Nancy Kennedy also
for --

THE COURT: All right. Ms. Kennedy.

MR. MILLS: Would you just sit here for just a
second?

THE COURT: All right. Now, I've got two matters
here. A hearing on a motion for bill of particulars; what's
that about, Mr. Mills?

MR. MILLS: This has to -- this has basically been
resolved, is what it is about.

THE COURT: Okay. Then, I'm not going to hear that
matter.

MR. MILLS: Yes, sir.

1 **THE COURT:** All right. Now I've got a motion to
2 continue the trial or pretrial conference, which will be the
3 trial, I think, Docket Number 247.

4 What are your reasons for asking for a continuance at
5 this time, Mr. Mills?

6 **MR. MILLS:** The reasons have to do with
7 Dr. Niamatali's health and his ability to and my concerns for
8 his ability to withstand the trial. There is since --

9 **THE COURT:** Stop you there. Is he ever going to be
10 able to have the ability to withstand, as you say, the trial?

11 **MR. MILLS:** I don't know. But I know he has a -- a
12 cardiac surgeon who wants to do either open-heart -- either
13 open-chest surgery or a stent on his heart, and he has been
14 having blood indicating, he believes, a recurrence of his
15 bladder cancer.

16 **THE COURT:** Stent on the arteries, not the heart, but
17 go ahead.

18 **MR. MILLS:** Oh, I apologize. And, so, this Monday,
19 two days ago, when I met with him, I had personal concern for
20 him and encouraged him to go to his oncologist, who is out of
21 town, and his -- and I encouraged him to go to the emergency
22 room, actually, and he has declined. I do have attached to my
23 motion the first paragraph, which is the most recent visit and
24 language from his cardiologist, and I would like and feel
25 necessary to ask Dr. Niamatali to testify and get that on the

1 record. I did not do that last time, and I believe that I
2 erred in a few statements that I made to the Court, not on
3 purpose, of course, but about the medical situation, and I feel
4 it necessary to ask Dr. Niamatali, and he's certainly willing
5 to, to testify and let the Court and the prosecutor ask
6 questions if they desire.

7 **THE COURT:** Well, whatever you think you need to do,
8 that's fine, sir.

9 **MR. MILLS:** Then, I would like to call Dr. Niamatali
10 to be sworn in to testify at this point, please. I believe --
11 do you want him to go up -- up there?

12 **(Pause)**

13 **THE CLERK:** If you'll raise your right hand, please.

14 **HABIBOOLA NIAMATALI, DEFENDANT, SWORN**

15 **THE COURT:** All right. If you'll have a seat,
16 please.

17 **(Pause; voices and whispers off the record)**

18 **DIRECT EXAMINATION**

19 **BY MR. MILLS:**

20 Q Would you please state your name and spell your name for
21 the court reporter, please, your first and last names.

22 A I'm Habiboola Niamatali. H-A-B-I-B-O-O-L-A; second name
23 N-I-A-M-A-T-A-L-I.

24 Q All right. How old are you?

25 A I am 75 plus.

1 Q And are you a medical doctor properly licensed in the
2 State of Texas?

3 A Yes, sir.

4 Q Okay. During your investigation you do not write any
5 controlled substances prescriptions, correct?

6 A Not for the last five years, sir.

7 Q All right, sir. This past Monday I discussed with you the
8 status of your health, and you -- I would like to ask you some
9 questions about that. You have prostate, bladder, and bone
10 cancer at this time, do you not?

11 A Yes, sir.

12 Q And since I -- so I won't use the wrong terminology, would
13 describe what is your -- the situation with your heart blockage
14 or an artery blockage?

15 A Yes. I have the right coronary artery, which is the
16 second most important vessel in the heart, already with three
17 stents, and great doubt as to whether a fourth stent could be
18 applied there. My left main coronary artery has an obstruction
19 that needs to be fixed. The obstruction is such that I am able
20 to walk short distances; I cannot exercise --

21 **THE COURT:** Okay. Let me ask you --

22 **THE WITNESS:** -- I can drive a car, but --

23 **THE COURT:** Doctor, let me ask you a question.

24 **THE WITNESS:** Yes, sir.

25 **THE COURT:** You said your left artery. Are you

1 talking about your left anterior descending or your circumflex?

2 **THE WITNESS:** No, sir. Just beyond the circumflex,
3 the left coronary artery has an obstruction. The fear is that
4 if they put in a stent in that left main coronary it may steal
5 blood from the one functioning good artery, the circumflex. As
6 such, there is doubt as to whether I would survive putting in a
7 stent there, and they are pushing to have an open-heart
8 operation, a bypass. The problem that we have within the
9 extended family is that members of the family have had
10 ventricular fibrillation when you mess with the -- that main
11 artery. I could die sudden death from surgery, from stenting,
12 or sudden stress. I have already -- you already know something
13 of the sudden stress the night before we last met when -- when
14 my wife was in a state of extreme dismay --

15 **THE COURT:** Okay. Let's go on with your immediate
16 problems, then. So, you talked about your artery. What else?

17 **THE WITNESS:** I'm sorry, sir?

18 **THE COURT:** You've talked about your artery; now,
19 what else?

20 **MR. MILLS:** Well, if -- may I --

21 **THE COURT:** Yeah, go ahead.

22 **MR. MILLS:** -- please?

23 **BY MR. MILLS:**

24 Q If the trial does not happen, say, on Monday or
25 immediately thereafter, what then is your plan for trying to

1 fix that?

2 A My -- my plan is I would like to take up this fight on the
3 first of January, 2017, and give it all that I've got. I will
4 make myself ready regardless of my condition, go fight what I
5 am charged with --

6 Q I understand. But what would your next plan be to help
7 your heart so that you're ready for trial?

8 A One is -- the first thing is that I -- the cardiologist
9 has demanded that I have 24-hour holter monitoring, which I
10 think he plans to do as soon as I -- as I am available for it,
11 and he will then decide whether I am ready -- I have to have a
12 pacemaker first or not. My heart rate goes down to 42, and if
13 it gets lower, I tend to faint.

14 Q And have you had fainting spells?

15 A At least two spells, sir.

16 Q All right. And is -- is -- all right. Now, let me ask
17 you about the situation with blood in your urine as it relates
18 to your bladder cancer. You have not seen the oncologist about
19 that, correct, because he's out of town?

20 A He's out of town. The plan is that -- it looks as if the
21 damn thing -- it looks as if the thing has recurred, and their
22 intention was to remove the complete bladder together with the
23 prostate. The feeling though is that I was not -- in the state
24 of my heart I should not be subjecting myself to that, so that
25 you had to fix the heart first. But there is a danger. Having

1 fixed my heart, that would require to be anticoagulated. If
2 I'm anticoagulated, they do not relish the idea of operating on
3 my prostate and bladder, removing it.

4 Q Because why?

5 A Because I may bleed to death. Just the last time that
6 they biopsied my prostate.

7 Q What happened then?

8 A I lost three pints, sir, and that was the third time that
9 I collapsed.

10 Q Three pints of blood?

11 A Yes, sir.

12 Q All right. I think earlier, or a few minutes ago, I used
13 the term "oncologist" instead of "urologist." Is that the term
14 I should be using, the specialty?

15 A Yes. It's the onco- -- the urologist looks after my
16 bladder at the present time. The oncologist looks after the
17 bone cancer.

18 Q All right. Have you been told to have treatment or an
19 examination now, whether you want to or not, regarding the
20 status of the bladder?

21 A I have not met with the urologist as yet. The plan is
22 next week -- possibly before next week --

23 Q Well, it would have to be if there is a trial next week.

24 A I have to get an ultrasound to see whether it is a
25 recurrence of the bladder cancer or it's something else;

1 whether I have developed a blockage in the right ureter, in
2 which case they have to proceed to surgery. I have to wait
3 until I do that. He's got to request it; I can't request it
4 myself. And then they will fix that, do what has to be done.
5 But, sir, I'm relishing in a kind of a way this fight that has
6 to come.

7 Q I understand. But do you understand my concern that you
8 be able to assist me in defending you in terms of your health
9 condition?

10 A Yes, sir. I appreciate it.

11 **MR. MILLS:** Yes, sir.

12 Judge, I think that I would be requesting something
13 as -- something like a 30-day continuance so that he can have
14 some of this testing done to see if surgery is required, to see
15 if a stent is required, to see if the open-heart surgery is
16 required. I don't feel that he is -- and -- and I don't feel
17 like a longer continuance should be, but I am very concerned
18 about his ability to assist himself and me. I would like to
19 pass the witness for questions from either the Court or the
20 prosecutor.

21 **THE COURT:** All right. Mr. Jackson?

22 **MR. JACKSON:** Thank you, your Honor.

23 //

24 //

25 //

1 **CROSS EXAMINATION**

2 **BY MR. JACKSON:**

3 Q Dr. Niamatali, these medical conditions you have described
4 have not kept you from treating people who have come to your
5 clinic for the last five years, have they?

6 A No, sir. They are not --

7 Q Okay.

8 A That is not stressful.

9 Q And they haven't kept you from driving a car to work and
10 home every day during those five years.

11 A No, sir. No, sir. No exercise is really required --

12 Q And they haven't --

13 A -- to drive a car.

14 Q -- kept you from coming to court when you've needed to,
15 have they?

16 A Correct.

17 Q And they haven't kept --

18 A But I have --

19 Q I apologize. Continue your answer.

20 A Yes. I am able to come to court, but in walking from my
21 car to here, I have to stop twice: one to take off my belt and
22 so on, and then from there to here I have to stop twice or slow
23 down. I do have the capacity to do some things.

24 Q And you have the capacity to testify here in court here
25 today, correct?

1 A Yes.

2 Q In fact, you are presenting testimony right now. You
3 understand you're under oath, correct?

4 A Correct.

5 Q You understand everything you need to tell the Court right
6 now needs to be true, correct?

7 A Provided it is not stressful, no problem.

8 Q So, are you saying if the question is stressful or if
9 you're under stress you do not have to tell the truth?

10 A I will always tell the truth, sir. You know that very
11 well.

12 Q Well, your last answer wasn't clear. So, you understand
13 you have to tell the truth under oath.

14 A Of course.

15 Q Okay. And you stated a few moments ago that you have not
16 written a prescription for a controlled substance in the last
17 five years. You recall saying that, right?

18 A Correct, sir.

19 Q And that is a true statement.

20 A Yes.

21 Q Okay. You want to put your trial off until January? Is
22 that what you're asking the Court?

23 A Possible.

24 Q Okay. And explain to me why January you will be ready.

25 A On 31st of December I will have completed 50 years as a

1 doctor.

2 Q So, this continuance is so you can get to 50 years as a
3 doctor?

4 A No.

5 Q So, it has nothing to do with your health?

6 A No.

7 Q Okay.

8 A No.

9 Q Then, why did you just say on December 31st you will
10 reach --

11 A Ask the question --

12 Q -- 50 years as a doctor?

13 A -- for which you need the full answer. You interrupted
14 the answer, sir. May I --

15 Q Oh, please continue. I didn't mean to interrupt you.

16 A Yes. It was a desire that I would complete 50 years as a
17 physician. I am now 49.7 or a little bit more than that. I
18 really want to do that five months, after which I will take on
19 all (indiscernible) including whatever you bring up; that's
20 one.

21 The second thing is, being aware that under stress I
22 sweat, I feel faint, I collapse, I would like to get myself
23 ready for that eventuality, that in the event that I conk out I
24 will have completed the things that I would like to do in the
25 next five months. One, fix my heart and my bladder and my

1 prostate. Find out why it is that I've lost so much weight. I
2 will continue to take the care, the treatment for the bone
3 cancer.

4 And the other things are very major things which I
5 set as objectives in my life. One, the DEA knows that I have
6 been working in energy for 60 years, and I believe that I can
7 provide an energy source that really has not been tapped in the
8 world; an energy source such that, in addition to air, water,
9 and food, if we have an energy source, we can achieve a lot.
10 It is for all mankind. It's not for America alone.

11 The second thing is, I do believe that it is possible
12 that I should -- that should I be allowed to sow the seeds of
13 something that I will describe, that in the process of time it
14 will bring back enormous fruit. I feel that it is possible to
15 unite mankind in many different ways. But in terms of
16 religion, which divides mankind now, it is possible to unify
17 it. I have spent -- unite mankind. I have spent 50-odd years
18 working on this, and I need to at least sow the seeds before I
19 die.

20 Q Okay. Are you finished?

21 A Yes.

22 Q Okay. So, if I'm understanding correctly, you need a
23 continuance of your trial to January 1st for --

24 A Yes.

25 Q -- four reasons: first, so you can reach 50 years of

1 practicing medicine; second, so you can fix your heart and the
2 rest of your health problems; third, so you can supply an
3 energy source to the world that will help us with our energy
4 problems; and, fourth, that you can unite mankind and -- from
5 the divisions that religion has caused. Did I state that -- is
6 that summary correct?

7 A That's a fair interpretation of what I've said.

8 MR. JACKSON: Okay. Thank you.

9 THE COURT: Mr. Mills?

10 MR. MILLS: Yes, your Honor.

11 REDIRECT EXAMINATION

12 BY MR. MILLS:

13 Q Dr. Niamatali, several years less than five years ago,
14 three years maybe approximately, was when you got -- lost the
15 right to subscribe or prescribe controlled substances, and yet
16 you've said several times under oath that it was five years.
17 Will you think back? Because it wasn't five years, was it,
18 Dr. Niamatali?

19 A Let me explain, sir, and then perhaps we will arrive at
20 the truth.

21 Q All right.

22 A The moment the DEA came in to me, the night before my
23 first operation, 15th of June, 2011, they requested that I
24 cease writing those substances. I immediately did that.
25 That's 15th of June, 2011. Now, this is five years from then.

1 The charge against me was brought after it was determined that
2 I was closed, that -- that it was desired that I should close
3 my office and disappear, and I saw absolutely no justification
4 for that. The DEA was very disturbed that they had removed
5 maybe 2,000 charts and they could not understand why it is that
6 I was still practicing. And it was pointed out to them that I
7 have 15,000 charts that have nothing to do with what they --
8 what they brought against me. And those 15,000 charts that are
9 there, they are patients that I've seen for the last five
10 years, and I'm seeing more now than I saw in the years when
11 the DEA was --

12 Q All right.

13 A -- (indiscernible).

14 Q So, it is your belief that that's when you stopped on --

15 A Yes, sir.

16 Q -- writing the prescriptions for controlled substances.

17 A Yes.

18 Q Let me ask you this. You and I have discussed the fact
19 that I am concerned, when we talk, that you are not able to
20 assist me because of your memory lapses and health problems.
21 Isn't that true?

22 A Yes, sir.

23 Q Do you understand that you need to be at some better level
24 of health to be tried and defend yourself the best way that you
25 can?

1 A Yes, sir.

2 Q All right. These other things about world religion and
3 energy I totally understand, and your desire to reach 50 years;
4 I totally understand the importance you place on that. I'm
5 focusing on your medical situation. Do you understand?

6 A Yes, sir.

7 Q Okay. You do have -- had -- you have had the ability to
8 drive yourself to your office, see some patients, take naps in
9 both the morning and the afternoon, correct?

10 A Yes, sir.

11 Q Your wife drove you here today, correct?

12 A Yes, sir.

13 Q She drove you; dropped you off; she will drive you home.

14 A Yes, sir.

15 Q Okay. It's not as though you don't have short-term
16 ability to talk and communicate, correct?

17 A Yes, sir.

18 Q The weight loss; you've lost almost 50 pounds in the last
19 six months, have you not?

20 A Yes, sir.

21 **THE COURT:** How much?

22 **THE WITNESS:** Fifty now.

23 **MR. MILLS:** Fifty.

24 **THE COURT:** Fifty?

25 **MR. MILLS:** Yes, sir.

1 **THE COURT:** Fifty pounds.

2 **THE WITNESS:** Yes, sir.

3 **THE COURT:** Well, his doctor says 17.

4 **MR. MILLS:** On what date, your Honor?

5 **THE COURT:** Well, I'm looking at 7/18 of 2016, just a
6 couple days ago.

7 **BY MR. MILLS:**

8 Q Do you know why your doctor would say 17 if you say it was
9 50?

10 **THE COURT:** And seven pounds of that's getting off
11 Crestor, according to the doctor; I don't know.

12 **MR. MILLS:** Well, I'm looking at the record. It
13 looks like on June 20 -- June 2nd, that he said he has 17
14 pounds of weight loss.

15 **BY MR. MILLS:**

16 Q In any case, how much weight loss do you think you've had?

17 A Sir, I was 234, and I think that I am now down to about
18 184.

19 Q All right.

20 A Give or take a couple of pounds.

21 **MR. MILLS:** All right. I don't think I have any
22 other questions.

23 **THE COURT:** Okay.

24 All right. You can step down, sir. Thank you.

25 **(Witness stepped down)**

1 **MR. MILLS:** I don't have any other testimony to
2 offer.

3 **THE COURT:** All right, sir.

4 Well, the only -- are you going to offer this --

5 **MR. MILLS:** Oh, I'm sorry. I would like to offer
6 the -- the medical records that's attached to my motion for
7 continuance as Defendant's Exhibit 1 for the purposes of this
8 hearing. I will hand a copy to the appropriate person.

9 **THE COURT:** Any objections to this from the
10 appropriate person? Mr. Jackson?

11 **MR. JACKSON:** I'm not sure I'm the appropriate
12 person, your Honor, but I have no objections.

13 **THE COURT:** Well, I thought he was going to give it
14 to you and let you see it.

15 **MR. JACKSON:** I believe he provide --

16 **THE COURT:** Oh.

17 **MR. JACKSON:** Mr. Mills has provided --

18 **THE COURT:** He's already given that to you. Okay.

19 **(Defendant's Exhibit Number 1 was received in evidence)**

20 **MR. JACKSON:** -- this to us before the hearing.

21 **THE COURT:** All right. Well, all right, sir.

22 Now, I've just heard his testimony. I just note the
23 only record I have in front of me is from Dr. -- looks like
24 Shaw?

25 **MR. MILLS:** Yes, your Honor.

1 **THE COURT:** And this is dated, as far as I can tell,
2 7/18/2016. What's today? Twenty -- what's today?

3 **THE CLERK:** Twentieth, your Honor.

4 **THE COURT:** Okay. Two days ago. He was there two
5 days ago is what you're saying?

6 **MR. MILLS:** To my knowledge.

7 **THE COURT:** Okay. Well, I mean, just follow along
8 with me, and then help me out with this, Mr. Mills. First of
9 all, he denies any chest pain. There is a statement by the
10 doctor in there that there is no chest pain. He has a history
11 of sinus -- of bradycardia and a sinus first degree AV block.
12 I note that there is no notation of symptomatic bradycardia;
13 it's just bradycardia. I mean, every -- millions of people
14 have bradycardia. Particularly, if you're a well-conditioned
15 athlete, you're going to have bradycardia for purposes.

16 First-degree AV block with normal sinus rhythm?
17 Nothing there flagging my attention. A lot of people have
18 that.

19 He says that he has 17 pounds of weight loss. I
20 don't know over what period of time.

21 He's been experiencing symptoms of exertional dyspnea
22 for the last three years. Well, that's the last three years
23 he's had shortness of breath. That he -- the doctor says he
24 denies any near-syncope episodes or extreme lightheadedness,
25 which would be indicative of some sort of a, you might think,

1 of a heart problem, but he denies any syncope or
2 lightheadedness.

3 **MR. MILLS:** Well, he said that he --

4 **THE COURT:** Well, let me finish. I'm trying to read
5 through this and trying to get an idea of what we're dealing
6 with here.

7 On 7/18/2006 (sic) they do a -- a EKG or ECG on him.
8 They note sinus bradycardia with a heartbeat of 55 beats a
9 minute. He's got an AV block, but, like I said, that's nothing
10 that jumps out at me there. A lot of people live with AV
11 blocks normally for all their life. I think the doctor would
12 agree with that.

13 There is a notation of lateral T-wave inversion. A
14 little more prominent compared to the previous EKG. I don't
15 know if they're looking at B-5 and B-6 there on the leads, but
16 probably that's where they're looking; he's got some T-wave
17 inversion. This is in 2016. He had noted lateral ischemia in
18 2001, 15 years before. So, he's got some ischemia. The
19 heart's not getting enough oxygen in the lateral area. But
20 it's been that way for over 15 years on these studies.

21 Like I said, the report in 2001 shows an area of
22 ischemia in the lateral area; it's still showing a lateral T-
23 wave inversion, but 15 years ago he had that. I mean, there is
24 nothing that I can see from the doctor's report that's changed
25 over the years in this man's health.

1 **MR. MILLS:** Well, other than that fact that --

2 **THE COURT:** Now, I'm not saying he doesn't have heart
3 problems.

4 **MR. MILLS:** Or three kinds of cancer that affect
5 other parts of his body, your Honor.

6 **THE COURT:** Well, I -- you know, I heard about that,
7 I think last time. He said --

8 **MR. MILLS:** You did.

9 **THE COURT:** -- he had, at least in seven, but he
10 hadn't gone in to have any surgery done on that. And I don't
11 remember if he told me it was three four or four three, but --
12 now, the -- if you want, I'll have probation take and run a
13 urine sample on him right now. Let's see if he's got
14 hematuria.

15 **MR. MILLS:** And may well. It doesn't matter. It's
16 fine with me, but I'd also like to ask him to testify again and
17 respond to your medical --

18 **THE COURT:** I'm just --

19 **MR. MILLS:** -- observations.

20 **THE COURT:** I'm not -- I'm just making observations
21 from the EKG report.

22 **MR. MILLS:** Judge, you're making medical observations
23 and conclusions.

24 **THE COURT:** I'm not making conclusions. I'm saying
25 what the reports say. It shows lateral ischemia in 2001; it

1 shows lateral ischemia in 2016.

2 **MR. MILLS:** And you're deciding on the meaning of
3 that in order to make a -- in order to see whether or not to
4 grant a continuance of the man who has an -- and maybe I should
5 testify -- who has a hard time sitting through meetings with
6 counsel, who hasn't been breaking the law in the last three
7 years during the pendency of this case, who's 75 years old, and
8 has -- and his cancer is not in remission, which is in writing
9 here, and then he has to be put to trial on Monday. And I just
10 feel like that it's depriving him of his right to effective
11 assistance of counsel, because he's not going to be physically
12 effective.

13 I would like to ask him to testify and respond to
14 some of your --

15 **THE COURT:** Well, my observations; I'm not making --
16 I'm not a doctor. I don't make medical opinions or
17 conclusions. I'm just reading from the report, what it says in
18 the report.

19 **MR. MILLS:** But you're saying what they mean.

20 **THE COURT:** Well, I said, yes, it says lateral
21 ischemia, and the other one says lateral ischemia.

22 **MR. MILLS:** I would like to ask him to testify to
23 respond to your --

24 **THE COURT:** Okay. Whatever you want to ask him to
25 do.

1 **MR. MILLS:** All right.

2 **THE COURT:** Ask him what ischemia means.

3 **MR. JACKSON:** May I have a moment to speak with
4 counsel, your Honor?

5 **THE COURT:** Yeah.

6 **(Pause; counsel conferred off the record)**

7 **MR. MILLS:** Okay. Would you go back up there,
8 please?

9 **THE COURT:** He can --

10 **MR. MILLS:** You're still under oath.

11 **THE COURT:** He can do it from right there --

12 **MR. MILLS:** Oh.

13 **THE COURT:** -- if it's brief. Just stay right there,
14 Doctor.

15 **MR. MILLS:** All right.

16 **THE COURT:** You can just ask him; if you have any
17 questions about what ischemia means or anything like that.

18 **FURTHER REDIRECT EXAMINATION**

19 **BY MR. MILLS:**

20 Q Would you respond -- he is asking if you want to respond
21 about ischemia, but I also want you to respond to his other
22 statements, please.

23 A Yes. Sir, ischemia simply means that the oxygen supply to
24 the muscle of the heart is impaired.

25 **THE COURT:** Yes.

1 **THE WITNESS:** It means --

2 **THE COURT:** That's what I said, noted, yes, sir.

3 **THE WITNESS:** Yes. It doesn't mean injury; it does
4 not mean death of muscle. It's just --

5 **THE COURT:** I understand.

6 **THE WITNESS:** (indiscernible).

7 **THE COURT:** And I think that I made -- you heard me
8 say that, just --

9 **THE WITNESS:** Yes, sir.

10 **THE COURT:** -- impaired oxygen. So, okay. What
11 else?

12 **THE WITNESS:** Okay. My concern is really that on the
13 last time we discussed this -- or you discussed this problem,
14 you correctly identified that if I did not take nitroglycerin
15 that it would suggest that I'm managing fairly well. Two, that
16 if I did not have evidence of heart failure -- swollen ankles,
17 shortness of breath, or fluid filling up the lungs -- that I am
18 managing fairly well. My only concern, and the cardiologist's
19 concern, were these episodes in which I collapsed. I have told
20 you of two episodes, and today we were reminded of a third.

21 **THE COURT:** Okay. Where -- where --

22 **THE WITNESS:** And on this stress --

23 **THE COURT:** Where is it in -- where -- sir, I'm
24 sorry. Where is it in the report from a cardiologist that
25 you've collapsed? Because I didn't see that you collapsed. It

1 said you denied syncope, you denied lightheadedness. So, I
2 didn't see where you had, as you say -- the cardiologist did
3 not report -- at least I didn't read it -- you collapsing.

4 **THE WITNESS:** Sir, it states on the fifth line of
5 the -- one, two, three, four, five -- that "He has experienced
6 near syncopal episodes since his last visit."

7 **THE COURT:** Yes, sir. "Near."

8 **THE WITNESS:** And is --

9 **THE COURT:** Now, okay, doctor. "Near syncopal" --
10 "syncope episode." Did she say -- or is this doctor a "she" or
11 "he"? I'm not sure (indiscernible). Did the doctor say you
12 experienced -- did you tell her you experienced a syncope
13 episode or a near-syncope episode?

14 **THE WITNESS:** I told them the following, sir. That
15 under the battering that I was receiving that night,
16 thankfully, I fainted. I fell asleep and woke up and was still
17 faced with that battering. I was sweating all over. We did
18 not discuss it any further. But I think that in the
19 circumstance -- and I thought I lost consciousness or fell
20 asleep. But then it happened again. I usually play it down,
21 because if I play it up, there's going to be further panic and
22 further problems. I just wanted to continue to get ready for
23 my fight.

24 **THE COURT:** Okay. How long have you had the
25 diagnosis of the AV block -- first-degree AV block?

1 **THE WITNESS:** Sir, I can't correctly answer, but I
2 believe that when my heart slows down to 42 all sorts of bad
3 things happen.

4 **THE COURT:** No, I didn't -- no. Do you know how long
5 you've had the diagnosis of the first-degree AV block?

6 **THE WITNESS:** Um --

7 **THE COURT:** (indiscernible)?

8 **THE WITNESS:** No, sir. I have not -- it's not --
9 it's a benign condition. I haven't worried about it, and I
10 can't say when it is.

11 **THE COURT:** Okay. And what I said about --

12 **THE WITNESS:** But it's --

13 **THE COURT:** The observations I made about many people
14 having AV block, first degree, many people live normally with
15 that and have no problem.

16 **THE WITNESS:** I wouldn't worry about it. However, I
17 have the condition in which there is the occasional dropped
18 beat.

19 **THE COURT:** Okay. You say you -- you have a -- is it
20 what they would call a "PAC," a "PJC," or a "PVC"?

21 **THE WITNESS:** No; none of those, sir. I don't know
22 the -- I know PVC, but the PAC?

23 **THE COURT:** You have a dropped beat?

24 **THE WITNESS:** With which the (indiscernible) does not
25 -- when it makes a contraction or a spike, a ventricular spike

1 should automatically follow it.

2 **THE COURT:** Okay.

3 **THE WITNESS:** If the ventricular spike doesn't follow
4 it, then that's just the one that they're worried about. The
5 question is whether I should have a pacemaker before proceeding
6 to any other thing. They have a question that they do a 24-
7 hour holter monitor before they make the decision about that.
8 The real thing is that -- is whether I could be stressed, and
9 then, in the midst of that 24-hour holter monitor, to see what
10 it triggers.

11 **THE COURT:** Where you could be stressed; are you
12 talking about having a stress test? Is that what they're
13 talking about?

14 **THE WITNESS:** No, sir.

15 **THE COURT:** You said "be stressed"?

16 **THE WITNESS:** If I am stressed. What happens is that
17 under stress I am aware that two things happen. I feel my
18 heart thumping or stopping. It is that stress that they wanted
19 to see what this is really all about.

20 **THE COURT:** Okay. Well --

21 **MR. MILLS:** If there are no more questions of him, I
22 would like to testify.

23 **THE COURT:** All right, sir. You're an officer of the
24 Court. You need not be sworn in.

25 **MR. MILLS:** Thank you.

1 **THE COURT:** You may proceed.

2 **MR. MILLS:** Thank you.

3 **THE COURT:** Do you want to do it in a narrative --

4 **MR. MILLS:** So --

5 **THE COURT:** -- or do you want to ask yourself a
6 question and give an answer?

7 **MR. MILLS:** If you don't mind; well, can I do it --
8 I'll do it in narrative and try not to abuse it.

9 **THE COURT:** All right.

10 **DIRECT EXAMINATION OF THOMAS W. MILLS, JR - VIA NARRATIVE**

11 **MR. MILLS:** My name is Thomas W. Mills, Jr. I have
12 been licensed in the State of Texas since September of 1972.
13 I'm board certified by the State and nationally in criminal
14 law. My practice has been 95 percent involved in criminal law
15 defense for 40 plus years.

16 I have represented Dr. Niamatali for a year or more;
17 I don't remember exactly how long. But recently, in preparing
18 for this trial, in a way that conversations with the prosecutor
19 and the courts made it appear that it was going to go to trial,
20 I have been trying to work more with Dr. Niamatali in my
21 office. He, in -- in going over documents and in questioning
22 him, he has periods where he lapses into a state where he's --
23 he doesn't faint, he doesn't fall out of his chair, but he
24 simply goes into a state where he does -- isn't being -- I
25 can't communicate with him. He has significant memory lapses,

1 which are very difficult in terms of preparing for trial,
2 because it requires going over these charts with patients.

3 I am aware of the concept of the constitutional right
4 to counsel and the right to have counsel be competent, and I do
5 not believe that I can competently represent him now because of
6 his physical condition that he manifests in my presence in my
7 office, with other people present at times.

8 **THE COURT:** Are you saying that you don't think he's
9 competent to proceed for trial?

10 **MR. MILLS:** I don't think he's physically competent,
11 and I think the physical -- to the extent that I know about
12 physical symptoms, I think that it does have a direct effect on
13 his mental status. I don't think he's, like, just walking
14 around mentally incompetent or psychotic at all. But he's not
15 able to help me prepare for his own trial.

16 I don't have any other statements.

17 **MR. JACKSON:** Your Honor, may I ask Mr. Mills a
18 question?

19 **THE COURT:** Mr. Jackson, you may ask any questions
20 you wish.

21 **MR. JACKSON:** Any. We'll confine it to this subject.

22 **CROSS EXAMINATION**

23 **BY MR. JACKSON:**

24 Q Mr. Mills, assuming Mr. Niamatali's physical and medical
25 condition remain the same, how much time would you need to

1 adequately prepare yourself to represent him for trial?

2 A How did you start that out? If --

3 Q Assuming his current medical and physical condition stay
4 the same --

5 A Same.

6 Q -- or possibly get slightly worse, how much time do you
7 believe you need to competently represent him at trial?

8 A Well, in terms of trial preparation, it's taking so long
9 to get through things, where he doesn't have a memory
10 recollection, I would think that it would take another 30 to 60
11 days. If at that time he's the same or worse and he's still in
12 trial sitting by me and unable to participate mentally in the
13 trial, I -- I just don't know how I would -- how he would ever
14 be ready, unless he gets medical help that -- that helps him
15 and affects his mind.

16 Q Okay. And you've relayed this to him, correct?

17 A To him?

18 Q Yes.

19 A Yes.

20 Q And -- and he has not scheduled any medical appointments
21 as a result of that?

22 A Well, I think that he did go to this doctor on Monday,
23 his -- his -- it was either his -- I think it's his urologist
24 is out of town until next week. I encouraged him, because of
25 the blood in the urine and the bladder cancer, which he says

1 it's a symptom of, has been before -- I encouraged him to go to
2 the emergency room.

3 Q But --

4 A But he declined.

5 Q -- he did not follow that advice.

6 A He did not.

7 **MR. JACKSON:** Okay.

8 **THE COURT:** Mr. Mills, I don't have any affidavits
9 from any doctors, any psychologists, any psychiatrists, any --
10 any doctors saying that he's not fit to stand trial or that his
11 health does not permit him to do so. I have nothing. And I
12 don't see anything in the record -- and I think he agrees with
13 me; I don't think I've made any mention here of anything that
14 the doctor doesn't agree with me on. It's just hard for me
15 to -- to understand how he cannot stand -- or cannot
16 participate in trial. Everything I observe about him -- and
17 this is my observation -- he always seems very competent and
18 capable to answer questions here in court, has no problem with
19 that. And that's just an observation. I'm not a psychologist.
20 I'm just making an observation. But I've been doing this a
21 long time, maybe too long, but --

22 **THE WITNESS:** Myself.

23 **(Laughter)**

24 **THE COURT:** But I don't have any -- I mean, if you
25 bring in a doctor's affidavit or something I could look at

1 and -- and wave that, I don't -- but, I mean -- I mean,
2 frankly, Mr. Mills, what I'm seeing here in this report is just
3 the same stuff that he's been going on with for a number of
4 years, at least 15 years or so, and even he, himself, says that
5 AV block is just no big deal. I don't know.

6 I understand that he's got medical problems. I
7 don't -- I'm not making light of that. I feel sorry for him
8 that he has that. I don't like to see anybody suffer with
9 cancer or any kind of heart problems. And he does have heart
10 problems; there's no question about that. I mean, I think
11 that's obvious. But, I mean, is it to the extent that he can't
12 participate in trial; that's what I have to make, and I don't
13 really have anything from any doctor that would indicate that.

14 **THE WITNESS:** Yes, sir.

15 **THE COURT:** I'm not going to make my ruling right
16 now. I'm going to think about it, and --

17 **THE WITNESS:** May I step down?

18 **THE COURT:** Sir?

19 **THE WITNESS:** May I step down?

20 **THE COURT:** Yes, sir.

21 I'm not going to make my ruling right now. I'm going
22 to think about it and give it my consideration and try -- if --
23 whatever I do, I'll try to get something out that one side or
24 the other can take exception with. I mean, I just don't know.
25 My -- my -- frankly, I don't know, Mr. Mills, when -- if -- if

1 the state is like you say with Dr. Niamatali, then there is
2 never going to be a time he can go to trial. So, the
3 Government just ought to throw its case in and let him go on
4 again and wherever he wants to go -- I can't remember where he
5 wanted to go -- and do work for the people. But I don't think
6 the Government's going to be that altruistic. So --

7 **MR. MILLS:** Well, I'll continue -- thank you for your
8 consideration, and Mr. Jackson and I, Mr. Russ, Ms. Kennedy
9 will all be in communication.

10 **THE COURT:** Right. Well, I -- and I -- I mean, I
11 don't -- I'm not -- Mr. Mills, I want you to understand. I'm
12 not playing doctor here. I'm just reading the reports. And I
13 don't see it. I mean, I'm just reading what the doctor says.
14 And it says this, says that. And, I mean, I know enough to
15 know what syncope and ischemia is. I think those are just
16 common, everyday terms that everybody knows.

17 **MR. MILLS:** Not everyone.

18 **THE COURT:** Well, 97 percent of the population
19 (indiscernible).

20 **MR. MILLS:** All right.

21 **THE COURT:** But, I mean, when you say you've got
22 ischemia, I think most people understand that, hey, that's
23 something not right, but -- you know. And even -- I think the
24 doctor testified he does not have injury and does not have
25 infarction. And those are all three different concepts. And I

1 find that Mr. -- or Doctor -- has been quite frank in his
2 medical condition.

3 **MR. MILLS:** I don't think he observes what I observe
4 when he is not -- when he's in kind of a fugue state. But,
5 nevertheless, I think he has answered objectively as best he
6 can, and I appreciate your letting us put this on.

7 **THE COURT:** And, like I said, I feel sorry for him.
8 I don't like to see -- I don't like to see any person, any
9 human being, suffer with any kind of a disease or condition.

10 **MR. MILLS:** I understand, Judge.

11 **THE COURT:** And, you know, I mean, the question I
12 have to make is, is he able competently to assist you in trial?
13 So, that's really what it comes down to. And I don't have any
14 affidavits from any doctors who say that under no circumstances
15 can he not participate in the trial. And I don't know if any
16 doctor would give that kind of an affidavit.

17 **MR. MILLS:** Well, you have my testimony to weigh.

18 **THE COURT:** Well, you just got on me for playing
19 doctor; you can't play doctor either.

20 **(Laughter)**

21 **MR. MILLS:** Well, I was playing lawyer.

22 **THE COURT:** Playing lawyer. All right, sir.

23 **MR. MILLS:** Thank you, your Honor.

24 **THE COURT:** I thank you, Mr. Mills.

25 We'll stand in recess. Thank you.

COURTROOM ATTENDANT: All rise.

(Proceeding was adjourned at 12:21 p.m.)

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

A handwritten signature in cursive script, appearing to read "Toni Hudson", is positioned above a horizontal line.

July 21, 2016

TONI HUDSON, TRANSCRIBER